

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

INDEMNITY INSURANCE COMPANY  
OF NORTH AMERICA,

Plaintiff,

v.

EXPEDITORS INTERNATIONAL OF  
WASHINGTON, INC., and DOES 1-5,

Defendants.

Case No.

COMPLAINT FOR CARGO DAMAGE

COMES NOW plaintiff INDEMNITY INSURANCE COMPANY OF NORTH  
AMERICA (hereinafter "Plaintiff" or "IINA"), and with this Complaint alleges against the above-  
named defendants upon information and belief as follows:

**JURISDICTION**

1. This case falls within the federal question jurisdiction of this court, within the  
provisions of 28 U.S.C. § 1331, arising from international commerce under the U.S.A.  
Multilateral Convention for International Carriage by Air ("**Montreal Convention**"), 1999 WL  
33292734, and under Federal common law, as hereinafter more fully appears. On information  
and belief, this Court also has diversity jurisdiction, as plaintiff and all of presumed defendants

COMPLAINT FOR CARGO DAMAGE - 1

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1 are citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of  
2 interest and costs.

3 **VENUE**

4 2. Venue is proper in this District Court pursuant to 28 U.S.C. § 1391 because this is  
5 a district where one or more of the defendants resides, and per contractual agreement.

6 **PERTINENT FACTS**

7 3. Plaintiff at all relevant times was and is a corporation organized and existing under  
8 the laws of one of the States of the United States of America and was engaged at all relevant  
9 times in the business of providing insurance coverage for loss or damage to cargo during  
10 shipment. It brings this action on its own behalf and as agent and/or trustee and/or assignee on  
11 behalf of and for the interest of all parties who may be or become interested in the shipment that  
12 is the subject of this action, as their respective interests may ultimately appear, and plaintiff is  
13 entitled to maintain this action.  
14

15 4. On information and belief, at and during all the times hereinafter mentioned,  
16 Expeditors International of Washington, Inc., was and now is a corporation or other business  
17 entity organized under the laws of the state of Delaware with a principal office and place of  
18 business at 1015 Third Avenue, 12<sup>th</sup> Floor, Seattle, Washington 98104, and was and now is  
19 engaged in business as a common carrier of merchandise by air or land for hire, and/or as freight  
20 forwarder, broker, transportation intermediary, and/or agent for other entities involved in the  
21 shipment of product that is the subject of this Complaint.  
22

23 5. On information and belief, at all relevant times, DOES 1-5 were and are as-yet  
24 unidentified Expeditors entities other than Expeditors International of Washington, Inc., that may  
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1 be responsible in whole or in part for the damages alleged in this Complaint. Said entities, if any,  
2 will be identified further as revealed during discovery, and are believed to be, or were at all  
3 relevant times, corporations or other business entities organized and operating under the laws of  
4 one of these United States, and were and now are engaged in business as a common carrier of  
5 merchandise by air or land for hire, and/or as freight forwarder, broker, transportation  
6 intermediary, and/or agent of some or all of the above, with an office, agent, or doing business  
7 within the jurisdiction of this court. All of the Expeditors entities involved in the shipment of  
8 product that is the subject of this Complaint, including DOES 1-5, shall be referred to hereinafter  
9 in this Complaint as "Expeditors."

11 6. At all relevant times Expeditors transacted and continues to transact business  
12 within this District, regularly soliciting business for the transport and ultimate delivery of  
13 shipments to worldwide destinations.

14 7. For all relevant times plaintiff provided cargo insurance coverage to GE Medical  
15 Systems and/or GE Medical Systems SCS (CH Hospitalor)(hereinafter "GE Medical Systems"),  
16 which was the owner, shipper, or consignee of a cargo of medical equipment shipped from  
17 Waukesha, Wisconsin, to Paris, France, by land and air, on or about May 29, 2013, with  
18 intermediate stop in Luxembourg. A portion of said cargo was damaged during the shipment  
19 prior to its reaching its ultimate destination in France, suffering loss and/or damage totaling  
20 \$175,692.73. By virtue of payments made by plaintiff to GE Medical Systems in the amount of  
21 \$125,692.73, and assignment to plaintiff of its insured's rights with respect to all damages  
22 sustained, including expense of \$2,126.73 and additional damages of \$50,000 (the amount of GE  
23 Medical Systems's deductible under its insurance policy), plaintiff has become subrogated to the  
24  
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1 rights held by GE Medical Systems in that regard and, as such, is a proper party to bring this  
2 action and to seek, and does hereby seek, recovery of \$175,692.73.

3 8. Plaintiff and its insured have duly performed all required duties and obligations on  
4 their part. The subject cargo was delivered to Expeditors in good order and condition, and  
5 Expeditors received, accepted, and agreed to transport said cargo for certain consideration to  
6 France, and carried, handled, and/or was the bailee of, or consolidated, forwarded, and/or  
7 controlled GE Medical Systems's cargo at all relevant times, and said cargo was damaged during  
8 the time of Expeditors's carriage, handling, control, or responsibility for such cargo.  
9

10 9. Expeditors booked the subject shipment with other companies and/or carriers that  
11 were not disclosed to plaintiff or its insured, possibly subject to terms and conditions not  
12 disclosed to plaintiff or its insured, and Expeditors agreed to transport and deliver the subject  
13 cargo to its designated ultimate destination in the same good order and condition as received.  
14

15 10. Expeditors issued to GE Medical Systems or its agent or affiliate its house Air  
16 Waybill bearing number 4041519451 for carriage of the subject goods from Chicago to Charles  
17 De Gaulle Airport in Paris, France. On information and belief, sometime during the transport of  
18 said cargo or during the period when it was under the control or responsibility of Expeditors, said  
19 cargo was dropped, suffering significant damage as hereinabove alleged. To the extent the  
20 damage occurred during the period of Expeditors's responsibility for care of the cargo, it is liable  
21 for all damages under the terms of the air waybill and under the provisions of the Montreal  
22 Convention.  
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24 11. At no time has Expeditors paid IINA or its insured/subrogor, GE Medical Systems,  
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1 with respect to the aforesaid damages, despite demands made therefor. Expeditors has, in fact,  
2 refused and continues to refuse to pay said damages.

3 **FIRST CLAIM FOR RELIEF**

4 12. IINA hereby incorporates herein the allegations of Paragraphs 1 through 11 above  
5 as if fully restated herein.

6 13. Under applicable law including the Montreal Convention and under the terms of  
7 the contract reflected by the aforesaid Expeditors House Air Waybill, Expeditors owed GE  
8 Medical Systems a duty to exercise reasonable care for the cargo entrusted to Expeditors for  
9 shipment and/or had a non-delegable duty to deliver such cargo safely, without damage, to its  
10 designated destination. Expeditors breached those duties by allowing significant damage to occur  
11 to the subject cargo during the period of time for which Expeditors was contractually responsible  
12 for its safe delivery to destination and under the terms of the Montreal Convention. As a result of  
13 said breach and/or other fault by Expeditors, proximately causing the aforesaid damages, IINA, as  
14 subrogee and assignee of the rights of its insured, GE Medical Systems, is entitled to recover  
15 damages in the amount of \$175,692.73, plus interest and fees and costs as determined by the  
16 Court.  
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19 **SECOND CLAIM FOR RELIEF**

20 14. IINA hereby incorporates herein the allegations of Paragraphs 1 through 11 and 13  
21 above as if fully restated herein.

22 15. In addition to contractual and statutory or treaty obligations, Expeditors had a  
23 common law duty to exercise reasonable care for the goods entrusted to it by GE Medical  
24 Systems. On information and belief, Expeditors negligently breached its duties as common  
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1 carrier, handler, bailee, warehouseman, agent, or in other capacities with respect to the subject  
2 cargo by allowing the cargo to be dropped a sufficient distance to proximately cause irreparable  
3 damage and harm, all in the amount of \$175,692.73 previously stated, and is therefore liable to  
4 plaintiff herein for such damage and any additional provable related damages.

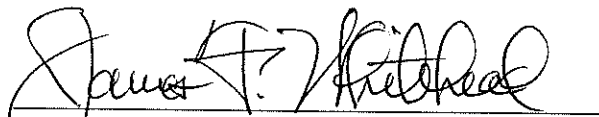
5 **PRAYER**

6 WHEREFORE, plaintiff prays:

- 7 1. That judgment be entered in favor of plaintiff against Expeditors for the amount of  
8 all damages to which plaintiff, as legal and/or equitable subrogee and assignee of the rights of GE  
9 Medical Systems, is entitled, together with interest and costs incurred;  
10  
11 2. For costs of suit and any recoverable attorneys fees to which plaintiff may be  
12 entitled; and  
13  
14 3. For such other further and different relief as this Court may deem just and proper  
15 in the premises.

16 Dated at Seattle, Washington, this 29<sup>th</sup> day of May, 2015.

17  
18 LAW OFFICE OF JAMES F. WHITEHEAD

19   
20 James F. Whitehead, WSBA#6319  
21 Attorneys for Plaintiff  
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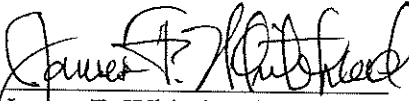
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**VERIFICATION**

I, James F. Whitehead, am counsel for plaintiff with respect to the above-described claims. The facts alleged in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief based upon my own knowledge of the casualty described above and the records made available to me by plaintiff's New York counsel and other persons involved in investigation of the claims and knowledgeable about them. On information and belief, authorized officers of plaintiff are not available in this district to make verifications, but I am so authorized.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 29, 2015.

  
James F. Whitehead